



THE UNITED STATES PATENT AND TRADEMARK OFFICE

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PATENT

Attorney Docket No. NALP013/01.082.01

In re Patent Application of:

Robert R. Grupe)
Application No.: 09/895,499)
Filed: June 29, 2001)
For: INTELLIGENT NETWORK)
SCANNING SYSTEM AND)
METHOD)

)

Date: June 14, 2002

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Technology Center 2100

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the US Postal Service as First Class Mail in an envelope addressed to the Commissioner for Patents, Washington D. C. 20231, on June 14, 2002.

Signed: Erica L. Mann
Erica L. Mann

Commissioner for Patents
Washington D.C. 20231

PETITION TO MAKE SPECIAL
37 C.F.R. 1.102 and MPEP § 708.02(VIII)

Sir:

1. Petition -- MPEP § 708.02(VIII)(A):

Applicant hereby petitions to make this new application special. This application has not received any examination by the Examiner.

2. Fee

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A check for the petition amount has been included. The Office is authorized to charge any additional fees for this petition to Deposit Account No. 50-1351 (Order No. NAI1P013/01.082.01).

3. Claims – MPEP § 708.02(VIII)(B)

All of the claims in this case are directed to a single invention. If the Office determines that all of the claims presented are not directed to a single invention, then applicant will make an election without traverse as a prerequisite to the grant of special status.

4. Searches and Declaration – MPEP § 708.02(VIII)(C)

As the undersigned practitioner, being duly registered to practice before the U.S. Patent and Trademark Office, I declare that a careful and thorough pre-examination search of the prior art has been made.

The searches were carried out by technical experts using commercially available databases of patents and publications, and were supplemented with materials provided by the client.

The classes and subclasses searched include:

370/351,352

709/223,224

713/200,201,202

The terms used in defining the search include combinations of the following:

“gateway”, “virus”, “load balancing”, “server”, “scan”, “network”, “node”. The resulting potential references were reviewed for their degree of relevancy to the present invention.

5. Discussion of Related References –MPEP § 708.02(VIII)(D) and (E)

The references deemed most closely related to the subject matter of the claimed invention are discussed below. Each of the references has been previously submitted with an Information Disclosure Statement. Also attached is form PTO-1449.

(1) U.S. Pat. No. 6,397,335 by Franczek et al., issued May 28, 2002 (hereinafter “Franczek”)

This reference is entitled “COMPUTER VIRUS SCREENING METHODS AND SYSTEMS” and discloses several virus screening systems. The most pertinent system includes a service bureau connected to several computers. The service bureau routes data that has been screened for viruses to a computer upon receiving a request. The computer can also send a message to the service bureau to selectively activate the virus screening.

Franczek however fails to disclose, teach or suggest the claimed limitations of selectively scanning data at a network element based on a load at the network element. Rather, Franczek’s system is based on receiving a message from the network device for selective scanning. This is much slower than Applicants’ system, which monitors the load where a data bottleneck can occur.

(2) U.S. Pat. No. 6,381,641 by Iwasaki, issued April 30, 2002 (hereinafter “Iwasaki”)

This reference is titled “NETWORK TRAFFIC MANAGEMENT SYSTEM” and it provides a traffic management system that monitors network traffic at various connections of a network. More particularly, the traffic monitor operates as a WAN probe.

Iwasaki’s system can be distinguished from Applicants’ claimed invention in that Iwasaki’s system does not conditionally scan data based on some sort of criteria, but rather

monitors data continuously. No analysis of the load on a particular network element is performed. Nor does Iwasaki's system determine an extent to show the data was previously scanned by another network element.

(3) U.S. Pat. No. 6,092,194 by Touboul, issued July 18, 2000 (hereinafter "Touboul")

The Touboul reference is titled "SYSTEM AND METHOD FOR PROTECTING A COMPUTER AND A NETWORK FROM HOSTILE DOWNLOADABLES" and it teaches a system that applies a security policy to downloadables prior to allowing the downloadables to enter the network. The system includes several paths, each path performing a different function. (See Figure 3 and related discussion.) A comparator determines through which paths the downloadable must pass in order for it to be accepted. The system also allows scanning of a portion of the downloadable in a code scanner, and later comparison with the security policy in the comparator.

The reference fails to disclose, teach or suggest determining a load on a network element and conditionally scanning the data based on the load. Nor does it determine the extent to which the data was previously scanned. Rather, Touboul's system appears to require being preset to either do full or partial inspections of the data. No load or scan-history analysis is performed.

(4) PCT Patent Application No. WO 93/22723 by Lerche et al., published Nov. 11, 1993 (hereinafter "Lerche")

This reference is titled "NETWORK ADAPTOR CONNECTED TO A COMPUTER FOR VIRUS SIGNATURE RECOGNITION IN ALL FILES ON A NETWORK" and it discusses a system that gathers all file packets circulating in a network, assembles them in a file, and scans the file for viruses. If a virus is found, the transmitting and receiving stations are notified, and a vaccine can be sent.

Lerche fails to disclose, teach or suggest the claimed limitations of selectively scanning data at a network element based on a load at the network element. Rather, Lerche's system collects the packets at a single location and scans them. This is much slower than Applicants' system, which does not require capture, assembly and scanning of all packets circulating in the network.

6. Conclusion

Applicant believes that this Petition to Make Special has met all requirements set forth by 37 C.F.R. 1.102 and MPEP § 708. 02(VIII), and respectfully requests that this Petition to Make Special be granted.

Silicon Valley IP Group
P.O. Box 721120
San Jose, California 95172-1120

Telephone: 408.971.2573

Respectfully Submitted,

Kevin J. Zika
Reg. No. 41,429